

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

CHRISTOPHER JONES
Claimant

VS.

OLATHE FORD SALES, INC.
Respondent
Self-Insured

)
)
)
)
)
)
)

Docket No. 213,185

ORDER

Respondent appeals from the preliminary hearing Order of Administrative Law Judge Alvin E. Witwer dated January 7, 1997, wherein the Administrative Law Judge found that claimant had proven that he suffered personal injury by accident arising out of and in the course of his employment with respondent, Olathe Ford Sales, Inc., and found that claimant had provided notice of said condition to Olathe Ford Sales, Inc. in a timely fashion. Claimant was awarded medical treatment and temporary total disability compensation.

ISSUES

- (1) Whether claimant suffered accidental injury on the date alleged.
- (2) Whether claimant's accidental injury arose out of and in the course of his employment with Olathe Ford Sales, Inc.
- (3) Whether claimant provided notice in a timely fashion pursuant to K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the entire evidentiary record and for purposes of preliminary hearing, the Appeals Board makes the following findings of fact and conclusions of law:

The Appeals Board finds that the Order of Administrative Law Judge Alvin E. Witwer dated January 7, 1997, should be, and is hereby, affirmed.

Claimant alleged he developed bilateral carpal tunnel syndrome while working as a mechanic for Olathe Ford Sales, Inc. with the bilateral carpal tunnel syndrome first being diagnosed in June 1995. Claimant continued working for respondent through February 1996. In June 1995, claimant underwent diagnostic testing including EMGs which showed bilateral carpal tunnel syndrome. Claimant testified that he advised Chet, his supervisor, of the condition shortly after it was diagnosed. Claimant's supervisor, Chester Ralph Stuteville, denied being advised of the condition. The issue dealing with whether or not claimant provided notice to respondent in a timely fashion is one of credibility. Claimant testified that the appropriate notice was given with respondent's representative denying same.

The Administrative Law Judge had the enviable opportunity to observe the witnesses as they testified. As the credibility of claimant and Mr. Stuteville appears to be the deciding factor, the finding by the Administrative Law Judge that claimant's testimony was more credible than that of Mr. Stuteville is a finding which the Appeals Board will not disturb at this time. As such, the Appeals Board finds claimant did provide appropriate notice of the accidental injury pursuant to K.S.A 44-520.

Claimant's testimony that he suffered accidental injury arising out of and in the course of his employment with respondent is basically uncontradicted. While respondent objected, respondent provided no additional evidence to show that claimant's condition was caused by any other employment. Respondent's contention that claimant's condition arose during his employment with Ottawa Ford-Lincoln-Mercury, Inc. is defeated by the fact that claimant's application with Ottawa Ford-Lincoln-Mercury, Inc., in March 1996, clearly indicated the presence of carpal tunnel syndrome at that time.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer dated January 7, 1997, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Michael R. Lawless, Overland Park, KS
Jeffrey D. Slattery, Kansas City, MO
M. Joan Klosterman, Kansas City, MO
Alvin E. Witwer, Administrative Law Judge
Philip S. Harness, Director